IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Sarwan Kumar Singh v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.4570/1989
under Articles 226 and 227 of the Constitution of India.

Date of Order : 2nd January, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. K.S.Rathore, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

The Additional Collector, Pali by order dated 9.2.1983 ordered for acquisition of 172 standard acres land from father of the petitioner being in excess to the ceiling limits provided for holding agricultural land. An appeal preferred under Section 23(2) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as “the Act of 1973”) by father of the petitioner and the petitioner too came to be rejected by Board of Revenue

by judgment dated 20.4.1989. The Board of Revenue by order dated 16.8.1989 refused to interfere with the judgment dated 20.4.1989 while rejecting review petition preferred by petitioner. Hence this petition for writ is submitted under Articles 226 and 227 of the Constitution of India giving challenge to the orders aforesaid.

The facts, notice to which is required to be taken for adjudication of instant petition for writ, are that by an order dated 5.4.1976 the Sub Divisional Officer, Sojat after conducting proceedings under Chapter III-B of the Rajasthan Tenancy Act, 1955 ordered for resumption of 7.04 standard acres land from father of petitioner Shri Anand Singh being in excess to the agricultural land holding ceiling limits. The State Government while exercising powers under Section 15 of the Act of 1973 under an order dated 12.9.1979/15.9.1979 ordered to reopen ceiling case against Shri Anand Singh and for that purpose appointed Additional Collector, Pali as an officer authorised. The ADM, Pali by order dated 9.2.1983 determined 202 standard acres land in excess with Shri Anand Singh then to prescribed agricultural land holding limits and, therefore, ordered for its resumption. The ADM, Pali determined the agricultural land holding of Shri Anand Singh with following figures:-

DETAILS OF LAND SITUATED AT VILLAGE CHELAWAS OWNED BY SHRI ANAND SINGH

Type of land	Measurement of land in bighas	Standard land calculated as standard acres
Chahi Bhumi	579	112.50
Barani-I	210.12	27.50
Barani-II	545.12	63.00
Gair Mumkin	11.11	--
Total	1139.10	202

The Additional Collector found that no transfer of land made by Shri Anand Singh could be treated recognised and on 1.4.1966 his family was consisting of four members, as such he was entitled to retain 30 standard acres land only. On basis of determination as above 172 standard acres land was declared surplus and was ordered to be resumed.

Being aggrieved by the same an appeal under Section 23(2) of the Act of 1973 was preferred before the Board of Revenue which also came to be rejected by judgment dated 20.4.1989. Before Board of Revenue it was contended by the petitioner that four transfers made under registered sale deed dated 24.2.1959, 25.2.1959, 30.9.1967 and 30.9.1967 were erroneously not treated recognised transfers by authorised officer and, therefore, the determination made with regard to agricultural holding by Shri Anand Singh is illegal. It was also contended that petitioner Sarwan Kumar

Singh was erroneously included in family of Shri Anand Singh irrespective of the fact that the land in question is an ancestral land and Sarwan Kumar Singh by birth was having coparcenery rights. The Board decided both the issues against the assessee, hence this petition for writ is preferred.

It is contended on behalf of the petitioner that the sale of 101.10 bighas land was made in favour of Jasia, Harjia and Dhania, all sons of Lakhma; and in favour of Kasa, Bhaga, Vajia, Malla, all sons of Dhana; and also in favour of Sivia, Jassa, Natha, Devia, all sons of Goma, under a registered sale deed dated 24.2.1959 and by sale deed dated 25.2.1959 99.10 bighas of land was transferred to Patia, Raja, Bhaga, Kisna, Gaina, all sons of Naga. Similarly, 184 bighas land was transferred in name of Khama and others through a registered sale deed dated 30.9.1967 and 132.2 bighas of land was transferred in name of Sarwan son of Banshilal Rawal by registered sale deed dated 30.9.1967. It is asserted that the authorised officer for no just and valid reason did not recognise the transfers referred above made through the registered sale deeds. According to counsel for the petitioner the Board of Revenue also failed to appreciate that the transfers were made by registered sale deeds and those were required to be taken into consideration while determining agricultural land holding by the petitioner.

The counsel for the petitioner has also contended that the entire land being ancestral land, petitioner Sarwan Kumar Singh was a coparcener from the date of his birth and, therefore, he was wrongly treated as family member of Anand Singh. According to counsel for the petitioner that mention of Sarwan Kumar Singh as dependent in the return submitted by Anand Singh is of no consequence as the fact about dependency is required to be proved by cogent evidence. It could not be accepted merely on its mentioning in the return by the assessee. It is emphasised by counsel for the petitioner that the authorised officer as well as Board of Revenue erred while treating Sarwan Kumar Singh as member of the family on the count that at the time of submission of return he was minor and was shown as dependent to the assessee.

A reply to the writ petition is filed on behalf of the respondents in general defending the orders passed by the authorised officer as well as Board of Revenue. It is stated in reply to the writ petition that the authorised officer rightly not treated the transfers said to be made as recognised as the sale deeds were not duly verified and were also not proved by sufficient evidence. It is also stated in reply that as on 1.4.1966 family of Shri Anand Singh was consisting of four members as a whole unit

and, therefore, the family was entitled to hold 30 standard acres of land only. According to the respondents, petitioner Sarwan Kumar Singh being minor as also being shown dependent to Anand Singh in the return submitted by the assessee was rightly included in family of Shri Anand Singh.

Heard counsel for the parties.

I have examined the orders passed by the authorised officer and also by Board of Revenue. The authorised officer after considering all material available on record gave a specific finding of fact that transfers made by Shri Anand Singh, details of which are given in preceding paras, was not recognised. The finding given by Board of Revenue is based on appreciation of evidence available on record. In fact Shri Anand Singh utterly failed to prove the transfer concerned by placing sufficient evidence. The Board of Revenue also examined this aspect of the matter and reached at a specific conclusion that Anand Singh failed to prove that on 24.2.1959 the purchasers of the land were major and were also agriculturists by profession. Shri Anand Singh failed to prove that the transfers said to be made were in accordance with the provisions of Section 30(DD) of the Rajasthan Tenancy Act, 1955. The Board of Revenue considered the findings given by Additional Collector, Pali and also examined validity of the transfers said to be made by

registered sale deed above and held that not a single transfer fulfils the conditions prescribed under Section 30(DD) of Chapter III-B of the Rajasthan Tenancy Act, 1955 and as such could not be held recognised. The finding given by the authorised officer and the Board of Revenue is based sound appreciation of evidence and material available on record which does not require any interference by this Court under Article 227 of the Constitution of India.

The next contention of counsel for the petitioner is that petitioner Sarwan Kumar Singh being son of Shri Anand Singh was coparcener in the land in dispute from the date of his birth, therefore, he could not be held dependent to Anand Singh merely for the reason that on 1.4.1966 he was minor and he was shown as dependent in the return submitted by the assessee.

I found merit in this contention of counsel for the petitioner as for being a member of family of the assessee question of dependence upon assessee is required to be decided by the authorised officer irrespective of the fact as to whether the person concerned is minor or major. A minor person having sufficient share in land can very well be independent and a major person having no land with him may be held dependent to the head of family.

In the present case the land in dispute is ancestral land, therefore, petitioner Sarwan Kumar Singh acquired coparcenery right from the date of his birth. Being holder of sufficient share in ancestral land Shri Sarwan Kumar Singh though being minor on the cut off date could not be treated dependent to Shri Anand Singh. The mention of Sarwan Kumar Singh in return as dependent by the assessee is also of no consequence. The fact with regard to dependence is required to be established by putting sufficient evidence. The question of dependence cannot be decided merely on basis of an averment in return by the assessee.

As I have already stated above that the land in question is ancestral land and Shri Sarwan Kumar Singh being son of Anand Singh acquired coparcenery rights from the date of his birth, therefore, the authorised officer as well as the Board of Revenue erred while treating him as member of family of the assessee.

Accordingly, this petition for writ is allowed in part. The order impugned passed by Board of Revenue dated 16.8.1989 and the order passed by the authorised officer dated 9.2.1983 are quashed to the extent they relate to determination of ceiling land by treating petitioner Sarwan Kumar Singh as member of family of Anand Singh. Shri Sarwan Kumar Singh being

an independent unit is also entitled to hold 30 standard acres of land. The orders impugned, therefore, are modified accordingly.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.